

COOPERATIVE AGREEMENT NO. 03-054

BETWEEN

SAN BERNARDINO ASSOCIATED GOVERNMENTS

AND THE COUNTY OF SAN BERNARDINO

This Agreement, entered into this ___ day of July, 2003, is between the San Bernardino Associated Governments (hereinafter "SANBAG") and the County of San Bernardino (hereinafter "COUNTY").

RECITALS

1. Assembly Bill 2928 established the Transportation Congestion Relief Program (TCRP) and provided major funding for the development and acquisition of right-of-way for the State Street/University Avenue railroad grade separation within the County of San Bernardino and the City of San Bernardino (hereinafter "Project").
2. At the request of the COUNTY and City of San Bernardino (CITY), SANBAG assumed the lead in developing and designing the Project. The Project is now under design. The right-of-way necessary for construction of the Project has been identified and appraisals of properties that must be acquired are nearing completion.
3. In December 2002, Governor Davis submitted a series of mid-year budget adjustment proposals that included the elimination of further transfers of funds from the State general fund to the Transportation Investment Fund, and eventually to the TCRP during the present and upcoming fiscal years.
4. Despite expectations, the California Legislature has not acted to suspend further fund transfers in support of the TCRP. Accordingly, Caltrans and the California Transportation Commission (CTC) are continuing reimbursement of TCRP projects for which allocations were made prior to December 2002.
5. The Governor's May Revision would transfer \$207 million of AB 2928 revenue to TCRP projects to meet existing allocations.
6. As a result of the Governor's proposals, coupled with written cautions received from Caltrans regarding the possibility of not receiving further reimbursement for TCRP expenditures, it was determined to continue the design of the Project as long as Caltrans continues to provide reimbursement for costs.

7. Property acquisition services are provided to SANBAG by the right-of-way section of the COUNTY under separate agreement. Through the right-of-way and appraisal process properties with total values estimated at \$1.5 million have been identified for acquisition for the Project. Of that, \$1.3 million is within the COUNTY's jurisdiction. A certain property has been identified that should be acquired expeditiously in order to avoid substantial additional costs that may be incurred if acquisition is postponed. Several months may transpire between the time that SANBAG must make purchase commitments to property owners and the time that escrow closes and SANBAG can request reimbursement from Caltrans. This delay increases the risk that the TCRP reimbursement authorization may be terminated during the process.
8. SANBAG asked the COUNTY to guarantee repayment of Project right-of-way costs for those properties within the COUNTY's jurisdiction which are approved by the COUNTY for acquisition in case the legislature acts before the completion of acquisition to stop the TCRP reimbursements. In consideration of the COUNTY's agreement to guarantee SANBAG reimbursement for right-of-way project costs not provided by the State, SANBAG will issue the notice to proceed to acquire those properties approved for acquisition by the COUNTY, and SANBAG will further assign to the COUNTY any and all rights SANBAG may have or assert against the State as a result of any subsequent cancellation of the project funding for which the COUNTY has assumed responsibility. If the Project is funded in the future the COUNTY will be reimbursed for the right-of-way project costs the COUNTY incurred due to the State budget crisis.

AGREEMENT

1. SANBAG agrees to continue to design the Project, to initiate acquisition of the parcels designated by the COUNTY, and to invoice the State of California for reimbursement under the TCRP.
2. The COUNTY agrees, in the event that, after the offer to purchase APN 0267-241-21 is issued, the California Legislature acts to suspend further fund transfers to the TCRP, and should SANBAG thereafter not receive reimbursement from the State for costs incurred for right-of-way acquisition for this Project, the COUNTY will, within thirty (30) days, directly reimburse SANBAG for such costs incurred.
3. If at any subsequent time SANBAG is reimbursed for the project right-of-way costs paid by the COUNTY, SANBAG will reimburse the COUNTY within thirty (30) days of SANBAG's receipt of the reimbursement.
4. In consideration of the COUNTY's agreement to reimburse SANBAG for right-of-way acquisition costs not provided by the State, SANBAG will issue the notice to

proceed to acquire right-of-way designated by the COUNTY for the Project and SANBAG will further assign to the COUNTY any and all rights SANBAG may have or assert against the State as a result of any subsequent cancellation of the project funding for which the COUNTY has assumed responsibility.

5. SANBAG's Executive Director shall have full authority to exercise SANBAG's rights under this Agreement.
6. This Agreement sets forth the complete understanding between the parties and no other representations or understandings shall govern the relationship between the parties.
7. If any legal action is instituted to enforce or declare any party's rights hereunder, each party, including the prevailing party, must bear its own costs and attorneys' fees. This paragraph shall not apply to those costs and attorneys' fees directly arising from any third party legal action against a party hereto and payable under Paragraph 10, concerning indemnification.
8. SANBAG and the COUNTY hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either SANBAG against the COUNTY or the COUNTY against SANBAG on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of SANBAG and the COUNTY, SANBAG's provision of services under this Agreement, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.
9. The parties acknowledge and agree that this Agreement was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue for any action or claim brought by any party to this Agreement will be the Central District of San Bernardino County. Each party hereby waives any law or rule of court that would allow them to request or demand a change of venue. If any action or claim concerning this Agreement is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Central District of San Bernardino County.
10.
 - A. The parties agree to indemnify and hold harmless each other, their officers, agents, and volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the indemnifying party's acts or omissions which arise from its performance of its obligations under this Agreement. The parties' indemnification obligations shall survive the termination of this Agreement.

B In the event the COUNTY and/or SANBAG is found to be comparatively

at fault for any claim, action, loss or damage which results from their respective obligations under this Agreement, the COUNTY and/or SANBAG shall indemnify the other to the extent of its comparative fault.

C. Furthermore, if the COUNTY or SANBAG attempts to seek recovery from the other for Workers Compensation benefits paid to an employee, the COUNTY and SANBAG agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

11. As this Agreement was jointly prepared by both parties, the language in all parts of this agreement shall be construed, in all cases, according to its fair meaning, and not for or against either party hereto.

COUNTY OF SAN BERNARDINO

**SAN BERNARDINO
ASSOCIATED GOVERNMENTS**

By: _____
Dennis Hansberger, Chairman of the Board

By: _____
Bill Alexander, SANBAG President

APPROVED AS TO LEGAL FORM:

APPROVED AS TO LEGAL FORM:

By: _____
Daniel Haueter, COUNTY Counsel

By: _____
Rex A. Hinesley, SANBAG Counsel